IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.2139 of 2007

Bhavan Jivraj & Co. Pvt.Ltd. Petitioner
Vs.
Mrs. Mamta Gautam Ashra Respondent

Ms.Snehal Mody for petitioner.
Mr.G.K.Mitra for respondent.

CORAM: B.H.MARLAPALLE, J.

June 21, 2007.

P.C.

1. Heard Ms.Snehal Mody, the learned counsel for the petitioner and Mr.Mitra appears for the respondent - original plaintiff.

2. Rule. Mr.Mitra waives service for the respondent. By consent, Rule is taken up for final hearing forthwith.

3. This petition arises from the order dated 20th July 2004 passed by the trial Court rejecting Interim Notice No.308 of 2004 and confirmed in Revision Application No.52 of 2005 which has been dismissed on 16th November 2006.

4. The respondent - plaintiff has filed RAD Suit No.335 of 2000 for declaration that she is a monthly

tenant in respect of the suit premises and for various other reliefs. As the Company did not file Written Statement, by an order dated 10th April 2003 the suit was directed to be listed for ex-parte order and, therefore, the defendant - Company took out Interim Notice No.308 of 2004 for setting aside the order dated 10th April 2003. The trial Court did not agree with the reasons set out in Interim Notice No.308 of 2004 and discharged the Notice. It was contended by the Defendant's Director Mrs.Veena Singhee that out of the three Directors the Company has including herself, the first Director - her son was in USA and Rajiv Singhee, her nephew, who is another Director, is permanently residing at Nagpur and consequently she was the only Director available at Mumbai. She admitted that the summons was served on 12/8/2002 but she being an old lady (62 years of age) and suffering from severe bronchial asthma, she could not take prompt steps to engage a lawyer and file the Written Statement. She also stated that her father-in-law expired and, therefore, her husband was required to look after the father-in-law's business for about two years and he could not remain in Mumbai. The trial Court framed the issue whether the defendant had made out good reasons for setting aside

the ex-parte hearing dated 10/4/2003 and it noted that Mrs. Veena Singhee could have instructed any of her employees or could have engaged an advocate to prepare the Written Statement on her behalf and she could have verified the same and submitted to the Court. The trial Court held that even if she was suffering from bronchial asthma, that could not be a sufficient reason to hold that she was confined to bed or she was not able to move out. It noted that Vakalatnama of Mr.Jayen Trivedi was filed on 2/12/2003, though it was signed on 4/12/2002. In short the trial Court concluded that the defendant had exhibited carelessness in responding to the summons and in filing the Written Statement.

5. The Revision Court noted that though the order was passed on 10th April 2003, the defendant did not approach the trial Court for setting aside the order and instead Interim Notice No.308 of 2004 was filed for the first time on 19th January 2004 i.e. after about ten months. The Revision Court, therefore, tried to find out the reasons for this inordinate delay of ten months and it could not find any satisfactory reasons. The Revision Court also noted that it was not stated by the defendants that they

wanted to file Written Statement after the order dated 10/4/2003 was set aside and on these premises, it proceeded to hold that the order passed by the trial Court could not be said to be patently erroneous so as to entertain a revision application.

6. The learned counsel for the petitioner now states that on the day the Interim Notice was moved before the trial Court, the Written Statement was signed and verified on 10th March 2004 when she was asked by the trial Court as to whether the Written Statement was ready. Having regards to the relief sought for by the tenant i.e. for declaration against the landlord, in fact it would be in the interest of the plaintiff herself that the suit is decided on merits after the Company was allowed to bring on record its reply and adduce evidence. However, the element of negligence as attributed to the Defendant - Company's Director warrants that the Company is saddled with costs and that too exemplary costs.

7. Hence the petition is allowed and the impugned orders are quashed and set aside. Interim Notice No.308 of 2004 is made absolute and it is directed

that the Written Statement verified by the defendant and which is in the custody of the Superintendent of the trial Court, be taken on record and exhibited within two weeks from today subject to the petitioner remitting an amount of Rs.5000/- by way of costs. This amount shall be deposited within a period of two weeks from today with the Registry of the trial Court and the plaintiff is allowed to withdraw the said amount. In the alternate, the petitioner may pay the cost amount directly to the plaintiff and place the receipt before the trial Court within two weeks from today.

. Trial of RAD Suit No.335 of 2000 is hereby expedited and the parties to appear before the trial Court on 16th July 2007.

. Rule is made absolute in the above terms. Writ to go forthwith to the trial Court.

(B.H.MARL